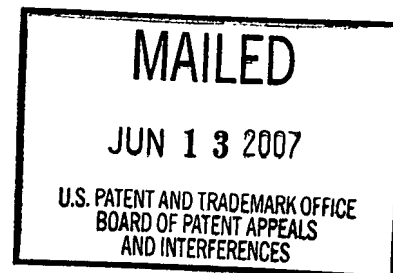


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: SCOTT BAGGS

Application No. 09/885,900



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 20, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated June 20, 2001. There is no indication on the record that the above Information Disclosure Statement was considered by the examiner. A written communication notifying appellant of the Examiner's consideration is required.

APPEAL BRIEF

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated December 22, 2005, in response to the Final Rejection mailed September 27, 2005. The Appeal Brief is not in compliance with the new rules of 37 CFR § 41.37(c) effective September 13, 2004.

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37 CFR § 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

* * *

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed December 22, 2006. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR § 41.37(c)(1)(v)).

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

EXAMINER'S ANSWER

Evidence of Record

On January 20, 2006, an Examiner's Answer was mailed in response to the Appeal Brief received December 22, 2005. A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the "Evidence Relied Upon" (section 8) the Examiner indicates "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal." In accordance with MPEP § 1207.02, the "Evidence Relied Upon" (section 8) should include:

(8) Evidence Relied Upon

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

Correction of the record is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) consideration and proper written response to the identified Information Disclosure Statement dated June 20, 2001, is required;
- 2) to notify appellants of such consideration;
- 3) hold the Appeal Brief filed December 22, 2005, defective;
- 4) notify applicants to file a "paper" in compliance with 37 CFR § 41.37;

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- 5) for the Examiner to issue and mail a form PTOL-90 notifying:
- a) Appellant of consideration of the Information Disclosure Statement filed June 20, 2001,
 - b) for considering and/or acknowledgment of the Appellant's "paper" (which should contain a concise explanation of the independent claims),
 - c) citing the references used to reject the claims on appeal in the Examiner's Answer; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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